THE BEST OF THE OLL #49

"The Declaration of the Rights of Man and of the Citizen" (1789)
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"1. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good. 2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression."

Declaration of the Rights of Man and of the Citizen [26 August, 1789]

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The Best of Bastiat <oll.libertyfund.org/title/2477>
[July 2013]

Editor’s Introduction

The exchange of ideas between the North American colonies and France was considerable during the late 18th century. The intellectual movement known as the Enlightenment was perhaps most powerfully felt in France but North America also had its enlightenment of which Benjamin Franklin and Thomas Jefferson were perhaps the best examples. Both men spent time in Paris and Jefferson had works by the French economist Destutt de Tracy translated into English (possible by his own hand).

The American Declaration of Independence (July 1776) and several state Constitutions and Declarations of Rights (Virginia June 1776, Massachusetts June 1780, Maryland August 1776, North Carolina December 1776, New Hampshire June 1784, Pennsylvania September 1776, Vermont 1777) influenced the writing of the French Declaration of Rights in August 1789. This is not surprising as one of the key figures in its drafting was General Lafayette who had served in the Continental Army in the war against Britain.

This influence was noted by Georg Jellinek in the 1890s and one of the extracts is a chapter from his book where he lays out the French articles side by side with the American clauses he thinks are most similar. The extract begins with the French original of the Declaration and then an English translation in parallel.

In order to spread knowledge of the new Declaration among the French public, beautiful colored posters of the text were printed and distributed throughout the country to be hung in pubic places. We have a copy of one of these posters on the front page.

Because of the constant turmoil of the French Revolution, as different political groups took control of the government they changed the constitution and the declaration of rights quite frequently. The one from August 1789 was quite liberal but it lasted only 4 years before it was replaced in 1793. The latter was influenced by the rising Jacobin group and the emphasis increasingly was placed on the idea of equality. The 1789 Declaration should be read alongside the liberal feminist version of 1791 written by Olympe de Gouges who had been influenced by the thought of the Marquis de Condorcet.

“The representatives of the French People, formed into a National Assembly, considering ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.”

Déclaration des Droits de l'Homme et du Citoyen (26 août 1789)[1]

Les Représentants du Peuple Français, constitués en Assemblée Nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'Homme sont les seules causes des malheurs publics et de la corruption des Gouvernements, ont résolu d'exposer, dans une Déclaration solennelle, les droits naturels, inaliénables et sacrés de l'Homme, afin que cette Déclaration, constamment présente à tous les Membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que les actes du pouvoir législatif, et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'Assemblée Nationale reconnaît et déclare, en présence et sous les auspices de l'Etre suprême, les droits suivants de l'Homme et du Citoyen.

Art. 1er. Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

Art. 2. Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'Homme. Ces droits sont la liberté, la propriété, la sûreté, et la résistance à l'oppression.

Art. 3. Le principe de toute Souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

Art. 4. La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres Membres de la Société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la Loi.

Art. 5. La Loi n'a le droit de défendre que les actions nuisibles à la Société. Tout ce qui n'est pas défendu par la Loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

Art. 6. La Loi est l'expression de la volonté générale. Tous les Citoyens ont droit de concourir personnellement, ou par leurs Représentants, à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les Citoyens étant égaux à ses yeux sont

également admissibles à toutes dignités, places et emplois publics, selon leur capacité, et sans autre distinction que celle de leurs vertus et de leurs talents.

Art. 7. Nul homme ne peut être accusé, arrêté ni détenu que dans les cas déterminés par la Loi, et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires, doivent être punis ; mais tout citoyen appelé ou saisi en vertu de la Loi doit obéir à l'instant : il se rend coupable par la résistance.

Art. 8. La Loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une Loi établie et promulguée antérieurement au délit, et légalement appliquée.

Art. 9. Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

Art. 10. Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la Loi.

Art. 11. La libre communication des pensées et des opinions est un des droits les plus précieux de l'Homme : tout Citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la Loi.

Art. 12. La garantie des droits de l'Homme et du Citoyen nécessite une force publique : cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux auxquels elle est confiée.

Art. 13. Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable : elle doit être également répartie entre tous les citoyens, en raison de leurs facultés.

Art. 14. Tous les Citoyens ont le droit de constater, par eux-mêmes ou par leurs représentants, la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

Art. 15. La Société a le droit de demander compte à tout Agent public de son administration.

Art. 16. Toute Société dans laquelle la garantie des Droits n'est pas assurée, ni la séparation des Pouvoirs déterminée, n'a point de

Constitution.

Art. 17. La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

“Art. 17. La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.”

Declaration of the Rights of Man and of the Citizen (26 August, 1789)[2]

The representatives of the French People, formed into a National Assembly, considering ignorance, forgetfulness or contempt of the rights of man to be the only causes of public misfortunes and the corruption of Governments, have resolved to set forth, in a solemn Declaration, the natural, unalienable and sacred rights of man, to the end that this Declaration, constantly present to all members of the body politic, may remind them unceasingly of their rights and their duties; to the end that the acts of the legislative power and those of the executive power, since they may be continually compared with the aim of every political institution, may thereby be the more respected; to the end that the demands of the citizens, founded henceforth on simple and incontestable principles, may always be directed toward the maintenance of the Constitution and the happiness of all.

In consequence whereof, the National Assembly recognises and declares, in the presence and under the auspices of the Supreme Being, the following Rights of Man and of the Citizen.

Article First. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.

Article 2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.

Article 3. The principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.

Article 4. Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.

Article 5. The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be

hindered, and no one may be compelled to do what the Law does not ordain.

Article 6. The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents.

Article 7. No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty.

Article 8. The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied.

Article 9. As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.

Article 10. No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.

Article 11. The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.

Article 12. To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.

Article 13. For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.

Article 14. All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration.

Article 15. Society has the right to ask a public official for an accounting of his administration.

Article 16. Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.

Article 17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.

“Article 17. Since the right to Property is inviolable and sacred, n o one may be deprived thereof, unless public necessity, legally asc ertained, obviously requires it, and just and prior indemnity has b een paid.”

Comparison of the French and American Declarations of Rights.[3]

French Article First. Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.

French Article 2. The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.

VIRGINIA, I. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

VIRGINIA, IV. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.

MASSACHUSETTS, Preamble to the Constitution. The end of the institution, maintenance, and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life.

MARYLAND, IV. The doctrine of nonresistance, against arbitrary power and oppression, is absurd, slavish and destructive of the good and happiness of mankind.

"MARYLAND, IV. The doctrine of nonresistance, against arbitrary power and oppression, is absurd, slavish and destructive of the good and happiness of mankind."

French Article 3. The principle of any Sovereignty lies primarily in the Nation. No corporate body, no individual may exercise any authority that does not expressly emanate from it.

VIRGINIA, II. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

French Article 4. Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law.

MASSACHUSETTS, Preamble. The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good.

MASSACHUSETTS, X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws.

French Article 5. The Law has the right to forbid only those actions that are injurious to society. Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain.

MASSACHUSETTS, XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character.

NORTH CAROLINA XIII. That every freeman, restrained of his liberty, is entitled to a remedy, to inquire into the lawfulness thereof, and to remove the same, if unlawful; and that such remedy ought not to be denied or delayed.

VIRGINIA, VII. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised. [1]

French Article 6. The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes,

shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents.

MARYLAND, V. That the right in the people to participate in the Legislature, is the best security of liberty, and the foundation of all free government.

MASSACHUSETTS, IX. All elections ought to be free;[2] and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

French Article 7. No man may be accused, arrested or detained except in the cases determined by the Law, and following the procedure that it has prescribed. Those who solicit, expedite, carry out, or cause to be carried out arbitrary orders must be punished; but any citizen summoned or apprehended by virtue of the Law, must give instant obedience; resistance makes him guilty.

NEW HAMPSHIRE, XII. Nor are the inhabitants of this State controllable by any other laws than those to which they or their representative body have given their consent.

MASSACHUSETTS, XII. No subject shall be held to answer for any crimes or no offence until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself; and every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. [3]

VIRGINIA, X. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

“VIRGINIA, X. That general warrants, whereby an officer or me ssenger may be commanded to search suspected places without ev idence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and suppor ted by evidence, are grievous and oppressive, and ought not to be granted.”

French Article 8. The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied.

NEW HAMPSHIRE, XVIII. All penalties ought to be proportioned to the nature of the offence. [4]

MARYLAND, XIV. That sanguinary laws ought to be avoided, as far as is consistent with the safety of the State; and no law, to inflict cruel and unusual pains and penalties, ought to be made in any case, or at any time hereafter.[5]

MARYLAND, XV. That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made.

French Article 9. As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.

Cf. above, Massachusetts, XII; further

MASSACHUSETTS, XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions.

MASSACHUSETTS, XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines. . .[6]

French Article 10. No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of

such opinions does not interfere with the established Law and Order.

NEW HAMPSHIRE, V. Every individual has a natural and unalienable right to worship GOD according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested or restrained in his person, liberty or estate for worshipping GOD, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion; provided he doth not disturb the public peace, or disturb others, in their religious worship.

French Article 11. The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.

VIRGINIA, XII. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

PENNSYLVANIA, XII. That the people have a right to freedom of speech, and of writing, and publishing their sentiments.

"PENNSYLVANIA, V. That government is, or ought to be, institu ted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or ad vantage of any single man, family, or sett of men, who are a part only of that community."

French Article 12. To guarantee the Rights of Man and of the Citizen a public force is necessary; this force is therefore established for the benefit of all, and not for the particular use of those to whom it is entrusted.

PENNSYLVANIA, V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or sett of men, who are a part only of that community.

French Article 13. For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay.

MASSACHUSETTS, X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary.

French Article 14. All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration.

MASSACHUSETTS, XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

French Article 15. Society has the right to ask a public official for an accounting of his administration.

See above, VIRGINIA, II; further

MASSACHUSETTS V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are the substitutes and agents, and are at all times accountable to them.

"NEW HAMPSHIRE, III. When men enter into a state of society, they surrender up some of their natural rights to that society, in o rder to insure the protection of others; and without such an equiv alent, the surrender is void."

French Article 16. Any society in which no provision is made for guaranteeing rights or for the separation of powers, has

no Constitution.

NEW HAMPSHIRE, III. When men enter into a state of society, they surrender up some of their natural rights to that society, in order to insure the protection of others; and without such an equivalent, the surrender is void.

MASSACHUSETTS, XXX. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.

French Article 17. Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.

MASSACHUSETTS, X. . . . But no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. . .. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

VERMONT, II. That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man’s property is taken for the use of the public, the owner ought to receive an equivalent in money.

Notes

[1.] Cf. English Bill of Rights, I.
[2.] English Bill of Rights, 8
[3.] Magna Charta, 39.
[4.] Magna Charta, 20.
[5.] English Bill of Rights, 10.
[6.] English Bill of Rights, 10.

Further Information

Source

The edition used for this extract: The French and English versions are taken from the website of the Constitutional Council of France <http://www.conseil-constitutionnel.fr>.

Georg Jellinek, *The Declaration of the Rights of Man and of Citizens: A Contribution to Modern Constitutional History*, by Georg Jellinek. Authorized translation from the German by Max Farrand, revised by the Author (New York: Henry Holt and Co., 1901). Chapter V.: Comparison of the French and American Declarations. <oll.libertyfund.org/title/1176/104823>.

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Further Reading

Georg Jellinek (1851-1911) <http://oll.libertyfund.org/person/4020>.

Topic: The French Revolution <http://oll.libertyfund.org/collection/66>.

Topic: The American Revolution and Constitution <http://oll.libertyfund.org/collection/65>.

"The distinctive principle of Western social philosophy is individu alism. It aims at the creation of a sphere in which the individual i s free to think, to choose, and to act without being restrained by t he interference of the social apparatus of coercion and oppressio n, the State."

[Ludwig von Mises, "Liberty and Property" (1958)]

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A subset of *The Best of the OLL* is *The Best of Bastiat* which is a collection of some of the best material in Liberty Fund's 6 volume edition of *The Collected Works of Frédéric Bastiat* (2011-). The full list can be found here <oll.libertyfund.org/title/2477>.

Another useful sampling of the contents of the OLL website is the collection of weekly *Quotations about Liberty and Power* which are organized by themes such as Free Trade, Money and Banking, Natural Rights, and so on. See for example, Richard Cobden's "I have a dream" speech <oll.libertyfund.org/quote/326>.

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The *Online Library of Liberty* is a project of Liberty Fund, Inc., a private educational foundation established in 1960 to encourage the study of the ideal of a society of free and responsible individuals. The OLL website has a large collection of books and study guides about individual liberty, limited constitutional government, the free market, and peace.

Liberty Fund: <www.libertyfund.org>.

OLL: <oll.libertyfund.org>.

[1] The French and English versions are taken from the website of the Constitutional Council of France <http://www.conseil-constitutionnel.fr>.

[2] The French and English versions are taken from the website of the Constitutional Council of France <http://www.conseil-constitutionnel.fr>.

[3] Georg Jellinek, *The Declaration of the Rights of Man and of Citizens: A Contribution to Modern Constitutional History*, by Georg Jellinek. Authorized translation from the German by Max Farrand, revised by the Author (New York: Henry Holt and Co., 1901). Chapter V.: Comparison of the French and American Declarations. <http://oll.libertyfund.org/title/1176/104823>. [I have replaced the French language version with the English translation in this extract. The related clauses from the American Bills follow after.]

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